

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

JACQUELYN PEDIGO, on Behalf)
of Herself and Others)
Similarly Situated)
Plaintiff,)

vs.)

NO.1:08-cv-803JRN

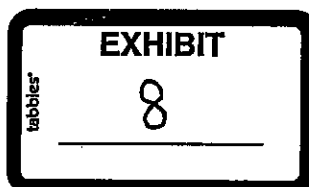
3003 SOUTH LAMAR, LLP d/b/a)
ALLIGATOR GRILL)
Defendant.)

ORAL AND VIDEOTAPED DEPOSITION

PAUL BLANDFORD

September 18, 2009

ORAL AND VIDEOTAPED DEPOSITION OF PAUL BLANDFORD,
produced as a witness at the instance of the Plaintiff
and duly sworn, was taken in the above-styled and
numbered cause on the 18th day of September, 2009, from
11:06 a.m. to 1:08 p.m., before LAUREN M. MORRISON ,
Certified Shorthand Reporter in and for the State of
Texas, reported by computerized stenotype machine at the
offices of Stephen M. Orr, 804 Rio Grande Street,
Austin, Texas 78701, pursuant to the Federal Rules of
Civil Procedure and the provisions stated on the record
or attached hereto.



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<p>1 APPEARANCES</p> <p>2</p> <p>3 FOR THE PLAINTIFF:</p> <p>4 Mr. Robert R. Debes, Jr.</p> <p>5 DEBES LAW FIRM</p> <p>6 17 S. Briar Hollow Lane</p> <p>7 Suite 302</p> <p>8 Houston, Texas 77027</p> <p>9 Telephone: (713) 623-0900</p> <p>10 Fax: (713) 623-0951</p> <p>11 FOR THE DEFENDANT:</p> <p>12 Mr. David W. Crawford</p> <p>13 ORR & OLAVSON</p> <p>14 804 Rio Grande Street</p> <p>15 Austin, Texas 78701</p> <p>16 Telephone: (512) 472-8392</p> <p>17 Fax: (512) 473-8417</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 THE VIDEOGRAPHER: This is the video taped</p> <p>2 deposition of Paul Blandford taken in the matter of</p> <p>3 Jacquelyn Pedigo on Behalf of Herself and Others</p> <p>4 Similarly Situated, Plaintiff, verses 3003 South Lamar,</p> <p>5 LLP d/b/a Alligator Grill, Defendant; Civil Action</p> <p>6 number 1:08-cv-803JRN in the United States District</p> <p>7 Court, Western District of Texas, Austin Division.</p> <p>8 This deposition is being held in the</p> <p>9 offices of Stephen Orr, 804 Rio Grande Street, Austin,</p> <p>10 Texas 78701. The date is September 18, 2009. We're on</p> <p>11 the record at 11:06.</p> <p>12 Will the attorneys please introduce</p> <p>13 themselves for the record.</p> <p>14 MR. DEBES: This is Bob Debes for the</p> <p>15 plaintiffs.</p> <p>16 MR. CRAWFORD: David Crawford for the</p> <p>17 defendant.</p> <p>18 PAUL BLANDFORD,</p> <p>19 having been first duly sworn, testified as follows:</p> <p>20 EXAMINATION</p> <p>21 BY MR. DEBES:</p> <p>22 Q Tell us your name, please, sir.</p> <p>23 A Paul Blandford.</p> <p>24 Q Mr. Blandford, put your role in perspective for</p> <p>25 this jury. You are currently the assistant – I'm</p>
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<p>1</p> <p>2 INDEX</p> <p>3 PAGE</p> <p>4 PAUL BLANDFORD</p> <p>5 Examination by MR. DEBES4</p> <p>6 Changes & Corrections 97</p> <p>7 Signature Page 98</p> <p>8 Court Reporter's Certificate 99</p> <p>9</p> <p>10 REQUESTED ON THE RECORD</p> <p>11 PAGE</p> <p>12 No. 1 Current dish person's first and last name 67</p> <p>13 No. 2 Prep cook's first and last name 72</p> <p>14</p> <p>15 EXHIBITS</p> <p>16 EXHIBIT DESCRIPTION PAGE</p> <p>17 8 Jacquelyn Pedigo's employee 49</p> <p>18 clock out sheets</p> <p>19 9 Copy of Javier Canchola's 95</p> <p>20 tipshare check</p> <p>21 10 Tip Distribution Report 78</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 sorry. You're currently the general manager for the</p> <p>2 Alligator Grill here in Austin. Is that right?</p> <p>3 A That's correct.</p> <p>4 Q How long have you held that position?</p> <p>5 A Four years.</p> <p>6 Q Okay. So we are currently in September of</p> <p>7 2009, so you've held that position since sometime in,</p> <p>8 roughly, 2005?</p> <p>9 A Correct.</p> <p>10 Q Okay. Have you reviewed anything before</p> <p>11 giving – or before coming to your deposition today?</p> <p>12 A No.</p> <p>13 Q You've not reviewed any materials to prepare</p> <p>14 you for your deposition today?</p> <p>15 A No.</p> <p>16 Q Have you read the deposition or reviewed the</p> <p>17 deposition of Steven Wimberly?</p> <p>18 A No, I have not.</p> <p>19 Q Have you reviewed the deposition of David</p> <p>20 Gebser?</p> <p>21 A No, I have not.</p> <p>22 Q Okay. Have you reviewed any of the policies</p> <p>23 and procedure manuals from the Alligator Grill?</p> <p>24 A I helped write them.</p> <p>25 Q Okay. But have you reviewed them in</p>

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1 Right?

2 A Yes.

3 Q To refill, perhaps, the bar — the beer and the

4 liquor bottles, that type of thing. Is that correct?

5 A Yes, sir.

6 Q Okay. Is that the primary responsibility of

7 the bar-back?

8 A Yes, it is.

9 Q Okay. In other words, the bar-back spends the

10 majority of his — I guess all of them are him.

11 A Yes, sir.

12 Q I apologize. All of — let me start over.

13 The bar-backs spend the majority of their

14 time, at the Alligator Grill doing the types of things

15 that we just discussed. Is that fair?

16 A That's fair.

17 Q Okay. Now, on page 3 of Exhibit No. 4, you'll

18 see at the top it says, job description.

19 A Yes, sir.

20 Q And it says title, Team Member?

21 A Yes, sir.

22 Q Who are the team members?

23 A That's anybody that works at the Alligator

24 Grill.

25 Q Okay. Does this include the dishwashers?

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1 A Yes, sir.

2 Q Are the expeditors considered team members

3 also?

4 A Yes, sir.

5 Q Are cooks considered team members?

6 A Yes, sir.

7 Q Are members of management considered team

8 members?

9 A Yes, sir.

10 Q Okay. The servers are obviously considered

11 A Yes, sir.

12 Q And hostesses?

13 A Yes, sir.

14 Q Okay. Under the uniform requirements on this

15 same page, page 3 of Exhibit No. 4, there are uniform

16 requirements for the server. Correct?

17 A Correct.

18 Q And the third one down — or actually, the

19 third bullet point down says Alligator tee shirt and

20 black, forward slash, dark green apron?

21 A Correct.

22 Q The wait staff don't [sic] wear aprons; do

23 they?

24 A Yes, sir, they do.

25 Q They do. And they wear Alligator Grill tee

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1 shirts?

2 A Yes, sir.

3 Q It's my understanding that both, the males and

4 the females, at one point in time wore Alligator Grill

5 tee shirts. And then at some point in time, the female

6 waiters — waitresses have started wearing tank tops

7 with the Alligator Grill logo.

8 A Yes, sir.

9 Q Is that right?

10 A Yes.

11 Q Okay. And similarly, the bartenders. The

12 bartenders wear either an Alligator Grill tee shirt or

13 tank top, or a black shirt. Is that right?

14 A Yes, sir.

15 Q Or a dark shirt?

16 A Yes —

17 Q Black?

18 A Yes.

19 Q Okay. And on Exhibit No. 4, page 3, underneath

20 the uniform requirement, it says that the employees will

21 purchase shirts at cost. You see that?

22 A Yes, sir.

23 Q And it's been the policy of the Alligator Grill

24 to require its employees to purchase the uniforms from

25 the restaurant. Is that true?

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1 A In the past, yes, sir.

2 Q Okay. In fact, if you turn to page 12 of

3 Exhibit No. 4, you'll see that the bottom — it says

4 shirts are currently \$7.50 for employees, aprons are

5 also \$7.50. Correct?

6 A Correct.

7 Q So historically, the restaurant has charged the

8 servers \$7.50 for their tee shirts and/or aprons.

9 Correct?

10 A In the past, yes.

11 Q Okay.

12 A We no longer do that.

13 Q All right. And — and y'all no longer do that

14 today. True?

15 A Correct.

16 Q When did y'all stop doing that?

17 A It was this year. I'm not sure of the exact

18 date.

19 Q It was after this lawsuit was filed. Correct?

20 A I believe so, yes.

21 Q This lawsuit was filed in October of 2008.

22 A Okay.

23 Q And the Department of Labor came in and did an

24 audit of the restaurant. You recall that?

25 A Yes, I do.

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1 Q Okay. And we're going to get to that in a
2 minute. But at the restaurant, are the only two
3 positions that receive gratuities directly from the
4 staff — from the customers, the waiters and the
5 bartenders?
6 A That's correct.
7 Q Okay. And at the end of every shift, the
8 waiter is required to contribute 4 percent of their
9 net — total net sales to a tip pool. Is that fair?
10 A That's correct.
11 Q And that's reflected on page 5 of Exhibit No. 4
12 also. Correct?
13 A Yes, sir.
14 Q Is that the tipout policy at the restaurant?
15 A Yes, sir.
16 Q How long has that been the policy?
17 A I believe pretty much since we started. If
18 not, it was within a month of when we started.
19 Q Okay. And I believe Mr. Wimberly told me that
20 he purchased the restaurant in, I think, May of 2004.
21 Does that sound generally correct?
22 A I wouldn't know. I didn't start until August
23 of '05.
24 Q Okay. When you came on in August of '05, or
25 shortly thereafter, the tip pool was in effect, or

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1 assumed thereafter became 4 percent of total net sales?
2 A There was a tip pool in effect before we
3 started.
4 Q Okay. But the 4 percent of total net sales has
5 been the Alligator Grill's tip pool policy for the last
6 several years. Right?
7 A Correct.
8 Q And this is a mandatory policy. Correct?
9 A Yes, sir.
10 Q In other words, the bartenders and waiters are
11 required, by policy, to contribute 4 percent of their
12 total net sales every shift to the tip pool. True?
13 A Correct.
14 Q Okay. And this applies to all of the waiters
15 and bartenders at the restaurant. Correct?
16 A Correct.
17 Q In other words, there is not — there aren't
18 exceptions to this policy. True?
19 A The only exception that I can think of is in
20 the past, when there were no staff to help out, we moved
21 it — changed the hours so that the bartenders would
22 make more at the end of the shift if there was nobody to
23 help them.
24 Q Okay. Have you ever had a — an employee, a
25 waiter or bartender, refuse to participate in the tip

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1 pool? In other words, refuse to contribute 4 percent of
2 their sales to the other people?
3 A No.
4 Q Has the tip pool always been 4 percent? Has it
5 been a higher or lower percentage over the years?
6 A I believe it's always been 4 percent as long as
7 we've been there.
8 Q Okay. Let's talk about the procedure — or the
9 mechanics I should call it, of the tipout. Okay?
10 A Okay.
11 (Exhibit 8 marked)
12 Q I'm going to hand you what's been marked as
13 Blandford Exhibit No. 8. And the reason I'm starting
14 with No. 8 is because Exhibits No. 1 through 6 were
15 marked to Mr. Wimberly's deposition, and Exhibit No. 7
16 was marked in Mr. Gebser's deposition.
17 Mr. Blandford, you've got Exhibit 8 in
18 front of you. Are you familiar, generally, with what
19 this document represents?
20 A Yes, I am.
21 Q Okay. You'll see in the lower right-hand
22 corner there is what I'll refer to as a bates stamp.
23 It's a number that's designated, P0002. Do you see
24 that?
25 A Yes, sir.

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1 Q Okay. That's a bates label that I put on
2 there. I just want you to know this was not on the
3 original document. Okay?
4 A Okay.
5 Q Looking at Exhibit No. 8, this appears to be
6 three separate checkouts — or clock outs for Jacquelyn
7 Pedigo. True?
8 A True.
9 Q And this is a document or a report that would
10 have been created at the end of her shift on each of
11 those respective evenings. True?
12 A Yes. It's her clock out slip.
13 Q Okay. If you look at the — there are three
14 receipts. The first one on the left — upper left is
15 August 4th of 2008. The one to the right is July 30th
16 of 2008. And the one at the — in the middle is
17 August 11th of 2008. Correct?
18 A Correct.
19 Q And you were the general manager for the
20 restaurant during all three of those shifts. Is that
21 true?
22 A Well, I don't know if I was there that day, but
23 myself and Robb were the GMs at that point, yes.
24 Q Okay. Looking at — let's start with the one
25 on the upper-left, the August 4th.